36 **S.B. CIVIL MISC. APPEAL NO.655/2007.**
Padal @ Poul & Anr. Vs. Gamer Lal & Ors.

Date of Order :: 19th February 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manish Pitaliya, for the appellants.

...

By way of this appeal against the award dated 23.06.2006 made by the Motor Accidents Claims Tribunal [Additional District Judge (Fast Track) No.3], Udaipur camp Salumber in Claim Case No.13/2005, the claimants seek enhancement over the amount of Rs.2,77,400/- awarded towards compensation under Section 166 of the Motor Vehicles Act, 1988.

Background facts noticeable from the impugned award are that the claimants made claim for compensation on 01.03.2005 with the submissions that their daughter, Kumari Sudhawati, about 28 years in age and working as a Nurse in Dhelana Sub-centre, was riding a bicycle with one Nana Lal and going for attending on one Smt. Kanku for her delivery on 06.01.1996 at about 10:00 p.m.; the non-applicant No.1 Gamer Lal brought driving rashly and negligently a dumper of the non-applicant No.2 M/s Khaitan Industries, Kherwara bearing registration No. RJQ 3854 and hit the bicycle; Sudhawati and Nana Lal both sustained injuries and

Sudhawati succumbed on the spot. After investigation on F.I.R. No.20/1996 in relation to the incident, the non-applicant No.1 was challaned for offences under Sections 279, 337, 338 and 304-A I.P.C. Stating the liability of the driver, owner and insurer of the said vehicle RJQ 3854, the claimants sought compensation for the loss suffered by them due to accidental death of their daughter Kumari Sudhawati. The non-applicants Nos. 1 and 2 contested the claim application with the submissions that the accident occurred for the negligence of the deceased herself. The insurer alleged the negligence on the part of the bicyclist and also stated various grounds for its exoneration.

After framing of necessary issues and taking evidence led by the parties, the Tribunal referred to one of the assertions of the non-applicants on the basis of the statements of NAW-1 Anwar Hussain that the matter was of rape and murder of the deceased and not of vehicular accident but rejected such assertion with reference to the police investigation papers and found the vehicular accident leading to death of Sudhawati having occurred for rash and negligent driving by the non-applicant No.1 Gamer Lal. Taking up quantification of compensation, the Tribunal referred to the age of deceased at 28 years and her salary certificate Ex.1 showing total salary at Rs.3,291/- and deductions at Rs.412/-

per month; also referred to the statements of the father of the deceased about his age at 54 years and that of her mother at 53 years; and also referred to the fact that the claimants-parents had two sons; and in the overall circumstances of the case, took the loss of contribution at Rs.1,920/- per month after deducting one-third from the net carry-home income of the deceased at Rs.2,879/-; and with application of multiplier of 11, assessed pecuniary loss at Rs.2,53,440/-; and while allowing further amount towards funeral expenses, property damage, transportation, mental agony etc. made the award of compensation in the sum of Rs.2,77,440/- and allowed interest @ 6% per annum from the date of filing of the claim application.

Assailing the award aforesaid, it has been contended by learned counsel for the claimant-appellants that the Tribunal has been in error in deducting more than one-third on personal expenditure from out of the earnings of the deceased; in applying multiplier only of 11 by taking the age of the claimants at 54 and 53 years respectively and in not considering that they were 44 and 43 years in age at the time of accident; and in not providing for future prospects though the deceased was in a stable job.

It is true that the Tribunal has referred to the age of the parents as on the date of claim application and has not

noticed that the accident occurred about 9 years before filing of the claim application but then, the fact remains that the deceased was an unmarried daughter of the claimants and she was about 28 years in age. In the overall circumstances of the case, when the claimants have chosen to seek compensation after 9 years of the incident, it cannot be said that application of multiplier of 11 has worked to serious injustice in this case. With reference to the family set up and nature of dependency, this Court is of opinion that the Tribunal has even otherwise allowed excessive amount at two-third from the carry-home net income of the deceased and even if no element towards future prospects has been provided, the same has not led to insufficient multiplicand or inadequate assessment of pecuniary loss.

The ultimate award of compensation as made by the Tribunal in the sum of Rs.2,77,440/- cannot be said to be lower than that of just compensation admissible in this case and there appears no scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

//Mohan//